



The Attorney General of Texas

August 20, 1982

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Mr. Tim Shank, Deputy Director
Texas Department on Aging
P. O. Box 12786, Capitol Station
Austin, Texas 78711

Dear Mr. Shank:

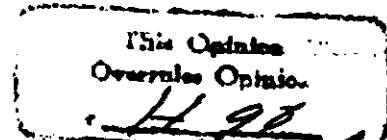
You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether records of an incomplete audit are available to the public.

You state that the Texas Department on Aging is presently in the process of auditing the Harris County Area Agency on Aging. The department contends, on the authority of Attorney General Opinion H-90 (1973), that all information relating to the audit "is excepted from disclosure until said audit is completed and made available to all." In Attorney General Opinion H-90 (1973), this office stated that:

It is our opinion that 'reports, audits, evaluations and investigations' do not become 'public information' until their completion, and that the Act does not require their disclosure in partially completed form.

Section 6 (1) of the Open Records Act provides that completed audits prepared by or for governmental bodies "are specifically... public information." Your argument, in effect, is that in light of section 6, audits which are not yet "completed" can never constitute public information. We disagree. Section 6 also provides that "[w]ithout limiting the meaning of other sections of this Act, the following categories of information are specifically made public information." (Emphasis added). And one of the "other sections" of the act, section 3(a), provides that:

All information collected, assembled or maintained by governmental bodies... in connection with the transaction of official business is public



Open Records Decision No. 321

Re: Whether records of incomplete audit of county agent on aging by Texas Department on Aging are available to the public

information... with the following exceptions
only.... (Emphasis added).

The conclusion reached in Attorney General Opinion H-90 (1973) has been modified by subsequent rulings. In Open Records Decision No. 140 (1976), for example, this office concluded that information concerning the value of taxable property in specified school districts had to be made available to the public. This information, which was contained in various appraisal reports, was to be used by the governor in preparing a required report on methods of allocating state funds to school districts. It was argued that none of the information concerning field appraisal reports on the value of property had to be released until the governor completed his report. But the decision concluded that:

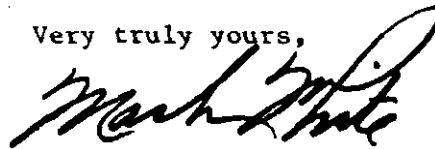
the bulk of the information requested is made up of records upon which the Governor's report will be based, rather than constituting the Governor's report, which is as yet incomplete. That is, the separate field reports on appraisals in various counties appear to be complete in themselves, and even though the information in them may be compiled, analyzed, corrected, adjusted, or otherwise dealt with in a more comprehensive report, the reports requested may be made public in the form in which they now exist. In our view, the requested information constitutes information which has been collected by the Governor's office and is subject to the Open Records Act. (Emphasis added).

See also Open Records Decision No. 197 (1978).

We believe the approach to the construction of the Open Records Act which was in effect taken in Open Records Decision No. 140 (1976) is the correct approach. We conclude, in other words, that the threshold question in each instance is whether material or data which is requested from a governmental body constitutes "information collected, assembled, or maintained by [the governmental body] pursuant to law or ordinance or in connection with the transaction of official business." If it does, the next question is whether it fits within any of the exceptions enumerated in section 3(a) of the act; if it does not come within an exception, it must be released. The fact that information has not yet been put into "final" form is, in other words, not dispositive of whether it must be made available to the public. To the extent that Attorney General Opinion H-90 (1973) concludes otherwise it is hereby overruled.

Since you have not invoked any specific exception under section 3(a) of the Open Records Act, we conclude that the incomplete audit at issue here must be made available to the requestor without delay.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark White", written in a cursive style.

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